

Hearing Date and Time: March 18, 2010 at 10:00 a.m. (prevailing Eastern time)
Response Date and Time: March 12, 2010 at 4:00 p.m. (prevailing Eastern time)¹

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11 Case
	:	05-44481-RDD
DPH HOLDINGS CORP., et al.,	:	
Reorganized Debtors.	:	(Jointly Administered)
	:	
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**ITAUTEC AMERICA, INC.'S RESPONSE TO
REORGANIZED DEBTORS' FORTY-FOURTH OMNIBUS CLAIMS OBJECTION**

ITAUTEC AMERICA, INC., ("Itaotec"), a creditor, files this Response in Opposition ("Response") to the Debtor's Forty-Fourth Omnibus Claims Objection ("Objection to Claim") (Docket No. # 19395) made pursuant to 11 U.S.C. §502(b) and (d) and Fed. R. Bankr. P. 3007 and would show:

1. Itaotec was a prepetition vendor to the debtor, Delphi Automotive Systems LLC ("Debtor").

¹ Debtors agreed to a 24 hour extension of time to file the Response.

2. On October 8 and 14, 2005, Delphi Corporation and certain of its U.S. subsidiaries and affiliates (collectively the "Debtors") filed voluntary petitions in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code.

3. Itaotec timely filed its proof of claim in the total amount of \$233,753.69, now designated as Claim No. 10811 in the Debtor's case (the "Itaotec Claim"). The Itaotec Claim is comprised of two parts as reflected on Exhibit A thereto: The amount of \$118,136.73 for goods already purchased and delivered to Delphi (as reflected on Delphi's Schedule F) and \$115,616.96 for cancellation claims (the "Cancellation Claim") pursuant to the Debtor's purchase orders (Purchase Orders).

4. The proof of claim constitutes *prima facie* evidence of the validity, amount and legal basis of the claim against the Debtor. See Fed. R. Bankr. Proc. 3001(f); Gardner v. N.J., 329 U.S. 565, 573, 67 S.Ct. 467, 471 (1947) ("A proof of claim is, of course, *prima facie* evidence of its validity"); In re Kahn, 114 B.R. 40, 44 (Bankr. S.D.N.Y. 1990) ("[A] properly filed proof of claim is deemed allowed unless a party in interest objects. This provision is a codification of the well-settled practice, as expressed by Mr. Justice Holmes of 'treating a sworn proof of claim as some evidence, even when it is denied'" (quoting Whitney v. Dresser, 200 U.S. 532, 536 26 S. Ct. 316, 317 (1906))).

5. On February 15, 2007, the Debtors objected to the Claim pursuant to the Debtors' Ninth Omnibus Objection (Docket No. 6968). On March 14, 2007, Itaotec filed its Response to the Debtors' Ninth Omnibus Claims Objection (Docket No. 7241).

6. On December 18, 2007, Debtors and Itaotec entered into a Settlement Agreement ("Stipulation"). In short, the Debtors withdrew their objections, allowing Itaotec to claim the

amount designated in the proof of claim ("Allowed Claim"). In return, Itaotec waived its rights to assert any other claim against Debtors.

7. The Stipulation was approved by the Court on January 11, 2008 (Docket No. 12067) ("Order").

8. In their Forty-Fourth Omnibus Objection, Debtors are now, *again*, objecting to the same claim belonging to Itaotec, in contravention to the Stipulation where they expressly allowed the claim.

9. The Debtor's objection to the Claim should be overruled and the claim should be allowed in its entirety, *inter alia*, for the following reasons: *i)* The Debtors are estopped from objecting to Itaotec's claim as the Debtors already agreed to the Allowed Claim pursuant to the "So Ordered" Stipulation and Itaotec changed its position in reliance thereon; *ii)* The doctrines of law of the case and res judicata preclude the Debtors from challenging Itaotec's previously Allowed Claim; *iii)* Itaotec is not liable to the Debtors under any preference theory; *iv)* the doctrines of laches and accord and satisfaction preclude the Objection; *vi)* the Debtors waived the Objection to the claim; and *vii)* equitable considerations and fairness support overruling the objection and allowing the claim in full.²

10. The Itaotec Claim is allowable in the full, noncontingent, liquidated amount claimed of \$233,753.69.

11. The Debtors may return any reply to Itaotec to the attention of Joanne Gelfand, Esq., Akerman Senterfitt, 350 East Las Olas Boulevard Suite 1600, Fort Lauderdale, FL 33301, with a copy to Itaotec America, Inc. Attn: Eduardo Archer de Castilho General Manager, 1935 NW 87th Ave., Doral, FL 33172.

² Itaotec reserves the right to amend this response and to assert additional defenses if this matter proceeds. Pursuant to the Debtors' instructions, Itaotec is filing a cursory response to adjourn the hearing on the objection pending a determination of Itaotec's alleged preference liability.

WHEREFORE, Itaotec respectfully requests that the Court enter an Order overruling the Debtors' Objection to Claim, with prejudice, or alternatively granting a hearing on the Objection to Claim, together with such other and further relief as is equitable and just.

Dated: New York, New York
March 12, 2009

Respectfully submitted,

By: /s/ Kathlyn M. Schwartz
Kathlyn M. Schwartz

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